The Legislative Framework for Municipal Planning, Subdivision and Development Control

Alberta Municipal Affairs

1.0 Introduction

The authority for municipal planning, subdivision and development control is established in Part 17 of the *Municipal Government Act* (MGA). The purpose of this Part is set out in section 617 of the Act. To summarize, it means that plans, land-use bylaws and planning decisions should be used to achieve the beneficial use of land without infringing on the rights of individuals except to the extent necessary for the greater public interest.

This bulletin discusses the legislated municipal planning framework, outlines the legislated steps in the subdivision and development control process, and notes the statutory exemptions and limitations to municipal planning authority.

2.0 Municipal Planning Overview

The legislative framework for municipal planning includes policy, operations, and appeal components. Municipalities establish planning policy by adopting statutory plans and land-use bylaws. Policies are put into operation by municipally appointed subdivision and development authorities which are responsible for receiving and deciding on subdivision and development permit applications. These administrative decisions may be appealed to the subdivision and development appeal board or, in certain instances, to the Municipal Government Board. The relationship of these components are discussed below.

Statutory Plans - MGA Sections 631-638

Statutory plans allow municipal councils to establish general development policies for all or part of the municipality. Legislation provides for four types of statutory plans:

1. The **municipal development plan** establishes policies for land-use in the entire municipality. Municipalities with a population of 3500 or more are required to adopt a municipal development plan. Municipalities with a population of less than 3500 are encouraged to do so.
2. Two or more municipalities may adopt an **intermunicipal development plan** in respect of land where a consensus on use and development is desired. Such a plan typically relates to the fringe area of urban municipalities or to shared natural features such as lakes. Municipalities are encouraged but not required to adopt such a plan.
3. Municipalities may adopt **area structure plans** to establish the general land use, transportation, and servicing framework for specific areas undergoing substantial new development.
4. Municipalities may adopt **area redevelopment plans** to outline proposals for addressing

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planning issues when rejuvenating existing developed areas.

Statutory plans must be consistent with each other.

Land-Use Bylaws - MGA Section 640

The land-use bylaw is the means of regulating the use and development of individual parcels of land. The Act defines "development" as an excavation or stockpile, construction, renovation or repairs to a building, a change in the use of land or intensity in the use of land.

All municipalities are required to adopt a land-use bylaw. The land-use bylaw divides the municipality into districts, prescribing permitted and/or discretionary uses for each district. The bylaw establishes development standards within each district and provides for a system for issuing development permits.

Subdivision Authority - MGA Section 623

The MGA requires all municipalities to establish a subdivision authority to exercise powers and duties on behalf of the municipality. The subdivision authority is responsible for receiving, processing, and deciding on subdivision applications in accordance with the Act and regulations. A subdivision authority may be any or all members of council, a designated officer, a municipal planning commission, or any other person or organization.

Subdivision Control - MGA Sections 652-657

Ordinarily, a person wishing to create two or more lots from a single parcel must obtain subdivision approval from the municipal subdivision authority. Conditions may be attached to a subdivision approval requiring the applicant to:

1. Provide land as environmental reserve in accordance with section 664 of the Act.
2. Provide up to 30 percent of the land for roads and public utilities.
3. Provide up to 10 percent of land or money in place of land, for municipal and/or school reserves.
4. Enter into a development agreement to construct or pay for the construction of roads, walkways, public utilities, or off-street parking necessary to serve the development.
5. Pay an off-site levy for the capital cost of water, sanitary sewer, or drainage facilities. An off-site levy may be collected only once in respect of a parcel.
6. Ensure compliance with the Planning and Development Part of the Act or regulations under that Part, statutory plans, or land-use bylaws.

Development Authority - MGA Section 624

The MGA requires all municipalities to establish a development authority to exercise powers and duties on behalf of the municipality. The development authority is responsible for receiving, processing, and deciding on development permit applications. A development authority may be one or more of a designated officer, a municipal planning commission, or any other person or organization. Most municipalities assign decision-making and administrative responsibilities to staff. In many municipalities, decisions involving discretionary authority are referred to a municipal planning commission.

Development Control - MGA Section 640

The land-use bylaw requires development permits for most developments. Conditions may be attached to a development permit requiring the applicant to:

1. Enter into a development agreement to construct or pay for the construction of roads, walkways, public utilities, or off-street parking necessary to serve the development.
2. Pay an off-site levy for the capital cost of water, sanitary sewer, or drainage facilities. An off-site levy may be collected only once in respect of a parcel.
3. Comply with provisions specified in the land-use bylaw.

Appeal Boards - MGA Sections 627-630, 678-687

Municipalities are required to establish a subdivision and development appeal board to hear appeals from the decision of the subdivision or development authority. Municipal employees, persons who carry out subdivision or development duties or are members of the municipal planning commission may not be appointed to the appeal board. In certain situations identified in the Act, subdivision appeals must be made to the Municipal Government Board. Planning and development bulletins contained in the Municipal Administrator's Handbook address specific situations in detail.

3.0 Obtaining Development Approval

All development must comply with the land-use bylaw. Most development will require a development permit. In some cases statutory plans and land-use bylaws must be amended or subdivision applications approved before a development permit can be issued.

Statutory Plan and Land-Use Bylaw Amendments

If a development proposal cannot be approved because it does not conform to the land use bylaw, a proponent may apply to the municipal council to amend the bylaw. A statutory plan amendment may also be necessary. Municipalities generally will coordinate these where required. A staff report and recommendation are usually prepared and forwarded to council. Notice must be given of an application for both a statutory plan and a land use-bylaw amendment and council must hold a public hearing before giving second reading.

Council's decision on proposed amendments to the land-use bylaw or statutory plans is final. There is no legislated time frame within which council must consider applications for amendment. Ordinarily, the minimum time is that required for at least two meetings of council, during which period notice must be given and the public hearing held. Depending on the complexity of the amendment, additional time may be necessary to prepare more extensive staff reports and review.

Subdivision Application

If a development proposal requires land to be subdivided, a subdivision application must be submitted to the municipal subdivision authority. The proposed subdivision must conform to any statutory plan and land-use bylaw and with the Act and Subdivision and Development Regulation. A subdivision authority must decide on an application within 60 days. An applicant may consider a failure to make a decision within this 60-day period a "deemed refusal." The subdivision authority may refuse an application, approve it, or approve it with conditions.

Subdivision Appeals

The subdivision authority's decision or deemed refusal may be appealed to the subdivision and development appeal board. If, based on the legislation, the application is determined to involve a provincial interest, the appeal must be to the Municipal Government Board. The subdivision and development appeal board must hold a hearing within 30 days and give a written decision within 15 days of concluding the hearing. The Municipal Government Board must hold a hearing within 60 days.

Development Permit Application

After any required subdivision has been approved or statutory plan or land-use bylaw amendments passed, a developer may apply for a development permit. An application for a permitted use that complies with the standards for a district must be approved, with or without conditions. Applications for discretionary uses or applications that do not meet all the standards set out for a district may be approved, conditionally approved, or refused. Applications for uses that are neither permitted nor discretionary within a district must be refused. The development authority must make a decision on a development permit within 40 days and notify affected persons of the decision in accordance with the land-use bylaw. An applicant may consider a failure to make a decision within this 40-day period a "deemed refusal." A development permit is not effective until the 14-day appeal period has expired or until approved on appeal by the subdivision and development appeal board.

Development Permit Appeals

An appeal may be launched by the applicant or by other affected persons by filing a notice of appeal with the subdivision and development appeal board within 14 days of receiving notice of the decision or of the deemed refusal. Where the use is permitted under the land-use bylaw, decisions may be appealed only if the appellant believes the provisions of the bylaw were relaxed, varied, or misinterpreted. The subdivision and development appeal board must hold a hearing within 30 days of receiving the notice of appeal and must give a written decision within 15 days of the conclusion of the hearing. The board's decision may be further appealed to the Court of Appeal on a point of law or jurisdiction.

4.0 Relationship of Municipal Planning to Provincial Authority

The relationship between the municipal planning and development authority and provincial authority is considered here under four headings: exemptions, limitations, consistency, and provincial jurisdiction.

Exemptions

Under section 14 of the *Interpretation Act*, the MGA is not binding on Her Majesty. Thus, where the province is undertaking development, it is not required to obtain subdivision or development approvals although, in fact, it often does. Where the province has leased or transferred title to another party, however, that party must comply with the requirements of the Act. The Federal government and Federal government agencies are also exempt.

Under section 618 of the MGA, the subdivision or development of roads, wells, or batteries, pipelines, designated Crown lands, and the geographic area of Metis settlements is exempt from the provincial regulations and municipal bylaws under the Planning and Development Part of the Act.

The Planning Act Exemption Regulation (section 618(4) of the Act) exempts other developments such as hydro transmission and electric distribution lines and irrigation works undertaken by an irrigation district from the planning provisions.

Limitations

Various sections of the Planning and Development Part establish rules or set limits on municipal planning authority. Examples include:

- Limitations on the membership of subdivision and development appeal boards - MGA section 627.
- Limitations on the content of off-site levy bylaws and development agreements - MGA sections 648-651.
- Limitations on land dedication for roads, municipal and school reserves - MGA sections 661-670.
- Requirements to make decisions on subdivision and development permit applications within the time specified in the Act.
- Requirements to notify the public of applications to amend statutory plans and bylaws, subdivision applications and development permit decisions.
- Subdivision processing requirements and setbacks and standards for subdivision and development as established in the Subdivision and Development Regulation.

Consistency

Section 619 of the Act establishes that a license, permit, approval, or authorization granted by the Natural Resources Conservation Board, Energy Resources Conservation Board or Alberta Energy and Utilities Board prevails over any statutory plan, land-use bylaw, subdivision decision, or development decision by a subdivision authority, development authority, subdivision and development appeal board or the Municipal Government Board.

Section 620 of the Act establishes that a condition of a provincial license, permit, approval, or authorization prevails over any condition of a development permit that conflicts with it.

Section 622 provides for the establishment of land use policies and requires that municipal statutory plans, land-use bylaws, and planning decisions be consistent with these policies. The Land Use Policies were approved by the Lieutenant Governor in Council on November 6, 1996.

Section 693 provides that the Lieutenant Governor in Council may establish Calgary and Edmonton International Airport vicinity protection area regulations. These regulations operate notwithstanding any statutory plan, land-use bylaw or other regulations under the Planning and Development Part and are binding on a subdivision authority, development authority, subdivision and development appeal board, and the Municipal Government Board. A municipality must amend its statutory plans and land-use bylaw to conform with the regulation.

There is no provincial review or approval of municipal plans or bylaws. Municipalities are entrusted to operate within the scope and requirements of the Act and regulations.

Provincial Jurisdiction

Many developments will require provincial approval prior to construction. The following examples

are not an exhaustive list:

- Development adjacent provincial highways requires a development permit from Alberta Transportation and Utilities.
- Certain developments identified in the *Environmental Protection and Enhancement Act* require an environmental impact assessment.
- Major projects identified in the *Natural Resources Conservation Act* require the approval of the Natural Resources Conservation Board.
- Energy and utility related projects require the approval of the Alberta Energy and Utilities Board.

It is the responsibility of the applicant to ensure any other necessary approvals have been obtained before proceeding with development.

5.0 Conclusions

This document is prepared as an overview of the legislative framework for municipal planning, subdivision and development control. It is not a legal interpretation. Interested parties are encouraged to review the appropriate sections of the *Municipal Government Act* and should always refer to the Act when quoting or establishing a legal position. Further detailed bulletins are contained in the planning section of the Municipal Administrators Handbook. Additional bulletins will be added as the need arises. Persons wishing to develop should discuss specific municipal approval requirements with municipal staff at the earliest opportunity. Questions on this document or the legislative framework for municipal planning, subdivision and development control generally can be directed to the Local Government Advisory Branch of Alberta Municipal Affairs, Edmonton, telephone 427-2225. To dial toll free outside of Edmonton, dial 310-0000 and ask to be connected to 427-2225.

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